

KELLEY DRYE & WARREN LLP

A LIMITED LIABILITY PARTNERSHIP

WASHINGTON HARBOUR, SUITE 400

3050 K STREET, NW

WASHINGTON, D.C. 20007-5108

(202) 342-8400

FACSIMILE

(202) 342-8451

www.kelleydrye.com

NEW YORK, NY

LOS ANGELES, CA

CHICAGO, IL

STAMFORD, CT

PARSIPPANY, NJ

BRUSSELS, BELGIUM

AFFILIATE OFFICES

MUMBAI, INDIA

DIRECT LINE: (202) 342-8518

EMAIL: tcohen@kelleydrye.com

November 25, 2013

Via ECFS

Marlene Dortch, Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: Ex Parte Filing on the CAF Phase II Program, WC Docket No. 10-90

Dear Ms. Dortch:

On November 21, 2013, Steve Morris and Jennifer McKee (National Cable & Telecommunications Association), Ross Lieberman (American Cable Association) and the undersigned, Thomas Cohen (Kelley Drye & Warren LLP, Counsel to the American Cable Association), met with Carol Matthey, Steve Rosenberg, and Alex Minard of the Wireline Competition Bureau to discuss the Connect America Fund (“CAF”) Phase II Program.¹ The representatives from the two associations made the following points about issues pending before the Commission:

1. For the post-election competitive bidding process to work successfully, the Commission must take steps to maximize the number of bidders. Unfortunately, the current Eligible Telecommunications Carrier (“ETC”) designation process is not well suited to the CAF Phase II auction process. For example, ETC designations are generally sought and obtained in areas where a provider already is offering service, but the CAF Phase II auction will be soliciting bids for areas where unsubsidized providers do not yet offer service. Moreover, until the challenge process is completed and price cap local exchange carriers (“LECs”) have decided whether to accept a statewide

¹ See *Connect America Fund et al.*, WC Docket No. 10-90 *et al.*, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC 17663 (2011) (*USF/ICC Transformation Order*), *pets. for review pending sub nom.* In re: FCC 11-161, No. 11-9900 (10th Cir. filed Dec. 8, 2011); *Connect America Fund*, WC Docket No. 10-90, Report and Order, DA 13-1113 (Wireline Comp. Bur., rel. May 16, 2013) (*CAF II Challenge/Election Process Order*); and *Connect America Fund*, WC Docket No. 10-90, Report and Order, DA 13-2115 (Wireline Comp. Bur., rel. Oct. 31, 2013) (*CAF II Service Obligations Order*).

Marlene H. Dortch
November 25, 2013
Page Two

commitment, competitive providers will not know which areas will be available for bidding. Under these circumstances, requiring providers to obtain ETC designations in areas in which they potentially might be interested in bidding for CAF Phase II support would be unduly onerous, and almost certainly would discourage potential bidders from participating. Therefore, the Commission should institute and administer an alternative process that facilitates participation by competitive providers in the auction while maintaining the Commission's rigorous requirements for recipients of support and retaining state authority to designate entities as ETCs.

2. In the *CAF II Challenge/Election Process Order*, the Bureau created a process for determining where unsubsidized competitors are providing the requisite broadband and voice services.² The form adopted for the challenge process will ensure that information is submitted in a common format and should give entities greater certainty about the information required.³ That said, in the pending CAF Phase I Round 2 challenge process,⁴ a number of issues were raised about the format by which information was submitted, as well as about the validity of certain information. Accordingly, the Commission should use this experience to provide the following additional guidance to challengers for Phase II –

First, consistent with the definition of broadband availability adopted for the FCC Form 477, the Commission should make clear that an area is served if the provider can turn-up service in a commercially reasonable amount of time. This definition of availability reflects standard industry practice of building near a location and then installing the drop when service is requested.

Second, the Commission should enable entities to file proprietary information confidentially, which will encourage more complete submissions for the Commission to consider. Because the Phase II challenge process is so restrictive, the Commission does not have to create a new Protective Order for this purpose but can use its standard process.

Third, the Commission should issue a notice setting forth for a public (non-confidential) submission (1) the type of information on customer bills that should be redacted to preserve customer privacy rights in accordance with Commission rules, and (2) the type of non-redacted information that would be considered sufficient evidence that an area is served.

² See *CAF II Challenge/Election Process Order*, ¶¶ 12-22.

³ See *id.*, Appendix.

⁴ See *Connect America Fund*, WC Docket No. 10-90, Report and Order, FCC 13-73, ¶¶ 28-33 (rel. May 22, 2013).

KELLEY DRYE & WARREN LLP

Marlene H. Dortch
November 25, 2013
Page Three

Fourth, the Commission should permit any officially authorized person in an entity, not just an officer of the corporation, to sign the certification. The Commission is seeking to ensure that the submitting entity officially attests to accuracy of the information submitted, and this will serve that purpose.

Finally, the associations closed by saying that they will continue to work with the Commission so that the Phase II program is operational next year, and that in no instance should the Commission adopt another round of Phase I incremental support, which, because it does not permit competitive providers to participate, neither efficiently allocates scarce universal service funds nor maximizes broadband deployments.

This letter is being filed electronically pursuant to section 1.1206 of the Commission's rules.

Sincerely,



Thomas Cohen
Kelley Drye & Warren, LLP
3050 K Street N.W.
Washington, DC 20007
202-342-8518
tcohen@kelleydrye.com
Counsel for the American Cable Association

cc: Carol Matthey
Steve Rosenberg
Alex Minard